

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:12 CR 116**

UNITED STATES OF AMERICA,

Vs.

EMER DEAN JONES.

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ORDER

THIS CAUSE coming on to be heard and being heard before the undersigned at the close of a Rule 11 proceeding that was held before this Court on December 20, 2012. It appearing to the Court at the call of this matter on for hearing the Defendant was present with his attorney, Mary Ellen Coleman and the government was present and represented through Assistant United States Attorney Thomas Ascik. From the arguments of counsel for Defendant and the arguments of the Assistant United States Attorney and the records in this cause, the Court makes the following findings:

Findings. On November 27, 2012 a bill of information was issued charging Defendant with transporting visual depictions which involved the use of a minor engaging in sexually explicit conduct, in violation of 18 U.S.C. § 2252(a)(1) and with possessing visual depictions which contained images of minors engaging in sexually explicit conduct, in violation of 18 U.S.C. § 2252(a)(4)(B). On

December 20, 2012, the undersigned held an inquiry, pursuant to Rule 11 of the Federal Rules of Criminal Procedure and accepted a plea of guilty of Defendant to those charges. At the end of the Rule 11 proceeding, this Court presented the issue of whether or not Defendant should now be detained, pursuant to 18 U.S.C. § 3143(a)(2).

Discussion. 18 U.S.C. § 3143(a)(2) provides as follows:

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless ----

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; or

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

From an examination of the records in this cause, it appears Defendant has now entered a plea of guilty to crimes of violence as set forth in 18 U.S.C. § 3156(a)(4)(C). Those crimes are crimes of violence that are referenced under 18 U.S.C. § 3142(f)(1)(A).

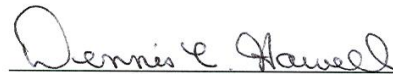
The undersigned made an inquiry of Assistant United States Attorney Thomas Ascik as to whether or not there is going to be a recommendation that no

sentence of imprisonment be imposed upon Defendant. Mr. Ascik advised the Court that such a recommendation could not be made in this matter. The undersigned cannot find there is a substantial likelihood that a motion for acquittal or new trial will be granted due to the plea of guilty of Defendant. It would thus appear and the Court is of the opinion that the Court is required by statute to apply the factors as set forth under 18 U.S.C. § 3143(a)(2) which require the detention of Defendant.

ORDER

IT IS, THEREFORE, ORDERED, that the Defendant be **DETAINED** pending further proceedings in this matter.

Signed: January 2, 2013



Dennis L. Howell
United States Magistrate Judge

